IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 713 of 2001.

Judgment reserved on 1.6.2007.

Date of decision 13th June, 2007..

M/S Shubh Timb Steels ….Petitioners.

Versus

YPL (STS) Workers Union (CITU) and another…Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners **Mr. Suneet Goel, Advocate.**

For the Respondents: **Mr. Neeraj Sharma, vice Mr. Jagdish Vats, Advocate.**

Dev Darshan Sud, J.

The petitioners are aggrieved by the judgment of the learned Labour Court in a reference petition under Section 10 of the Industrial Disputes Act, 1948 (hereafter referred to as the Act), holding that the lay off resorted to by petitioners was not in accordance with the provisions of the Act and that the demand

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

raised by the workers protesting about the illegal lay off and demanding consequential benefits was within the parameters of law.

Claim petition was filed by the respondents who were the petitioners before the learned Labour Court stating that lay off resorted to by the respondents was illegal. The petitioners raised an industrial dispute challenging the lay off resorted to by the employer with effect from 2.9.1996 as illegal. A charter of demand dated 22.8.1996 which included a demand for implementation of minimum wages and house rent allowance in terms of settlement dated 28.2.1995, revocation of suspension of one of the workmen Shri Badri Dass and increase in wages by Rs.800/- per month, payment of other allowances etc. was also submitted to the employer. The matter was taken up for conciliation in accordance with law but without success. Ultimately a reference under Section 10 of the Act was made to the learned Labour Court for adjudication. The points for determination for the learned Labour Court were:

> **"1. Whether the lay off resorted to by the Management of M/S Shumb Timb Steels, Ltd., Plot No. 22-24, Sector 1, Parwanoo,**

District Solan (HP) in respect of 16 workers w.e.f. 2.9.1996 is legal and justified, if not, to what relief including lay off compensation and other service benefits, the aggrieved workmen are entitled to?

2. Whether the demands raised by the YPL, Shumb Steels limited Workers' union with the Management of M/S Shumb Steels, Ltd., Parwanoo vide their demand notice, dated 22.8.1996 (copy enclosed) are genuine and justified if yes, which of their should be accepted and from which date?"

Respondents herein had submitted that the lay off had been resorted to without obtaining permission from the statutory authority as required by law under Section 25 of the Act and, therefore, also on that count, the action of the petitioners herein was against law. Reply was filed by petitioners (respondents before the learned Labour Court) and the petition resisted on a number of grounds. One of the submissions made was that the unit had to face closure because of non availability of wood which was the basic raw material required for manufacturing. The respondents had submitted that the wood section of the unit was closed in the circumstances

of non availability of raw material with effect from 16.2.1997. On the other point urged with respect to permission, it was stated that no permission was required before laying off the workers.

Evidence of two witnesses namely PW-1 Nina Ram and RW-1 Shri S.S.Modgil was recorded. The learned Labour Court, after consideration of the evidence, held that the contention raised by the petitioners herein that there were two different units was not established on the material on record. It also held that the provisions of Section 25-F of the Act were attracted. On consideration of the entire material, the learned Labour Court also concluded that the mandatory requirement of Section 25 of the Act had not been complied with. On the question of grant of demands raised by the workmen in their charter submitted to their employer, the learned Labour Court held that there was no evidence to suggest that such demand had in fact been raised. In conclusion, it was held that the reference did not contravene the provisions of Section 12(2) of the Act. The reference, therefore, was partially answered in favour of the workmen holding that the petitioners are entitled to the wages and other

allowances under law from 2.9.1996 during the period of lay off alongwith allowances as permissible under law.

Learned counsel appearing for the petitioners has assailed the award on a number of grounds. He submits that the unit which was closed down was different and distinct from the steel unit and the manufacturing activities of the petitioners could not be considered as a combined unit. Learned counsel has placed reliance on M/S Ebrahim Currim and Sons v.. The Regional Provident Fund Commissioner, Maharashtra, Goa and another (1993 (Vol. 67) INDIAN FACTORIES AND LABOUR REPORTS, 1124), holding that merely because two units are owned by the same person, they cannot be treated as one establishment. This decision was rendered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Dealing with the applicability of Section 2-A of that Act (which is in pari materia with Section 2 (ka) of the Act) the Court, mainly relying upon the decision of the Hon'ble Supreme Court in *Management of Pratap Press, New Delhi v. Secretary, Delhi Press Workers' Union Delhi (AIR 1960 SC 1213)* and *Associated Cement Companies Ltd. V. Their Workmen (AIR 1960 SC 56)* held that the test of

functional integrality was to be satisfied before different activities can be clubbed together and treated as one. He also relied upon a judgment of the Karnataka High Court in B. Ganapathy Bhandarkar v. Regional Provident Fund Commissioner, Bangalore (1990 (60) FACTORIES AND LABOUR REPORTS 143), holding that two different and distinct units are to be treated as such unless inter connection between them is established which could be one of mutual dependence of one on the other so that one cannot function altogether in absence of the other.

Referring to another judgment of the Karnataka High Court in Devesh Sandeep Associates and others v. Regional Provident Fund Commissioner, Bangalore (1997 (76) INDIAN FACTORIES AND LABOUR REPORTS 35), learned counsel submits that test of functional integrality is not satisfied merely by common ownership of the two units. This was also a case under the Employees Provident Fund Act.

Learned counsel also relied on a judgment of this Court in Concrete Poles and Paper Conversion Workers' Union, Parwanoo v. HP State Small Industries and Export Corp. Ltd. (1996 (5) (Vol. 115) SERVICE LAW

REPORTER 494) has held that the provisions of Section 2(ka) of the Act are attracted where there are two different industrial units, may be under the same roof. As I have held there can be no dispute regarding the proposition of law which has been laid down and urged by the learned counsel for the petitioner. It is the factual foundation in pleadings and evidence which has to be considered before the principle of law is to be applied.

The evidence on record does not suggest this state of affairs. Rather, if the evidence of the respondents is seen it nowhere establishes any of the pleas now raised by the petitioner, RW-1 steps into the witness box and states that "*the manufacturing of the company consists of Wooden Articles, like Shuttles, bobbin blocks, ply boards etc. and manufacturing of steel i.e. steel inguts. They were steel work and wood work two separate units. All the statutory record was separate supervisory staff was also separate, working places were also including the entry points were also separate. Balance sheet accounting was also separate. In each of the units, the number of workers were less than 50. The staff was not transferred to either of the*

Units because the job was not interlinked". **Surprisingly none of the records which establishes the independent identity of the two units including the statutory record in the nature of accounts, balance sheets, licenses, record of the ledger, income tax returns or any other document which has been placed on record to establish this fact. It is by now well established that a party in possession of the best evidence should produce the same. It is not open to the respondents to urge that it was for the petitioners to have proved that such record exists.**

The Hon'ble Supreme Court in <u>Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others</u> (AIR 1968 Supreme Court 1418) has held as under:

> **"…..Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and**

to rely upon the abstract doctrine of onus of proof. In *Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi, 44 Ind App 98 at p 103 = (AIR 1917 PC 6 at p. 8)* Lord Shaw observed as follows:

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the courts the best material for its decision. With regard to third parties, this may be right enough – they have no responsibility for the conduct of the suit, but with regard to the parties to the suit it is, in their Lordships opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."

This passage was cited with approval by this Court in a recent decision – *Biltu Ram v. Jainandan Prasad, Civil Appeal No. 941 of 1965. D/- 15-4-1968 (SC).* In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial

Committee in *Mt. Bilas Kunwar v. Desraj Ranjit Singh, 42 Ind App 202 at p. 206 = (AIR 1915 PC 96 at p. 98):*

"But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents."

7. But Shah, J., speaking for the Court, stated:

"The observations of the Judicial Committee do not support the proposition that unless a party is called upon expressly to make an affidavit of documents and inspection and production of documents is demanded, the Court cannot raise an adverse inference against a party withholding evidence in his possession. Such a rule is inconsistent with illustration (g) of S. 114 of the Evidence Act, and also an impressive body of authority."

In these circumstances, I hold that the petitioners have been unable to establish their claim that they were two different units or establishments as was urged by the learned counsel. Even otherwise, the jurisdiction of this Court in proceedings under Article 226 of the Constitution of India cannot be extended to re-appreciation of facts or evidence on record, unless perversity can be established. The Hon'ble Supreme Court has, on more than one occasion, reiterated that the High Court while dealing with petition under Article 226, cannot re-appreciate or re-assess the evidence unless perversity is writ large. Reference be made to Indian Overseas Bank v. I.O.B. Staff Canteen Workers'Union and another (2000) 4 SCC 245). It was held:

> **"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed**

by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and

sufficient basis for recording its findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."

In Management of Madurantakam Coop.Sugar Mills Ltd. V. S.Viswanathan (2005) 3 SCC 193). The Hon'ble Supreme Court reiterated this proposition in the following terms:

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a

finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was

> **reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."**

Similarly, in P.G.I. OF MEDICAL EDUCATION & RESEARCH, CHANDIGARH V. RAJ KUMAR (2001) 2 SCC 54), the Supreme Court has reminded the High Courts of its jurisdiction under Article 226 of the Constitution of India while dealing with the award of the Labour Court; it was held:

> **"…..The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari.**

> **The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in *Syed Yakoob v. K.S.Radhakrishnan (AIR 1964 SC 477).*"**

and in Management of MADURANTAKAM COOP. SUGAR MILLS LTD. v. S.VISWANATHAN (2005) 3 SCC 193), it was held that only in a case of finding of perversity, or judgment arrived at without any legal evidence, High Court is permitted while exercising its powers under Articles 226/227 of the Constitution of India to go into questions of fact decided by the Labour Court. Of course, this exercise can only be undertaken if the Court records reasons why it intends reconsidering the finding of fact. The Court held:

> **"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final Court of facts in these types of disputes, but if a finding of**

fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective

satisfaction in the place of such satisfaction of the Labour Court."

I have not been taken through any material on record which would show that the findings arrived at are perverse. Rather, the evidence on record establishes that the petitioner herein has been unable to justify the lay off.

On the question of compliance of Section 25 of the Act, learned counsel has drawn my attention to Annexure P-4 filed with the writ petition. That is a communication addressed to the Labour Officer, Parwanoo stating that the workers have been laid off. No permission as required or compliance of the other mandatory requirements has been pleaded or proved before the learned Labour Court. Rather, the stand of the petitioner herein was that no permission was required. However, while leading evidence, again RW-1 in cross examination has admitted non compliance. He states that from the record which was brought to the Court on that day, there is nothing in writing to suggest that the petitioners had at any point of time expressed their intention to closing the unit and to have applied to the

authorities. In these circumstances, the submissions made by the learned counsel appearing for the petitioners cannot be accepted. As I have held that the order of the Labour Court does not show any perversity for having misinterpreted or misread any oral or documentary evidence or based a finding on a fact which is non existent, I cannot while exercising powers under Article 226 interfere in the finding of fact arrived at by the learned Labour Court. I also do not find from the record that the petitioners have complied with the mandatory conditions of Section 25 of the Act. In these circumstances, this writ petition is dismissed. There shall be no order as to costs. All interim orders shall stand vacated and all miscellaneous applications disposed of in terms of the judgment.

June 13, 2007 (PC). (Dev Darshan Sud), J.